IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 195 of 2003
with
SPECIAL CIVIL APPLICATIONS No 1272, 2604, 3785 and 4672,
all of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

USMANGANI ISMAILBHAI MINYANA
Versus
COMMISSIONER OF POLICE

Appearance:
M/S ANIL S DAVE, HR PRAJAPATI, BANNA DATTA, SR PATEL
for Petitioners
MR SUDHANSHU PATEL, AGP for Respondent No. 1-3 IN
SCAs NO.1272 & 3785 of 2003
MS MITA PANCHAL, AGP for Respondent No. 1-3 IN
SCAs NO.195, 2604 and 4672 of 2003

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 05/06/2003

ORAL JUDGEMENT

#. In this group of five petitions under Article 226 of the Constitution of India, the common challenge is against the detention orders passed under Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the "PASA Act") on various grounds. However, the main ground of challenge in these petitions is pertaining to the subjective satisfaction arrived at by the detaining authority while exercising his discretion, and as such, upon consensus, this group is being disposed of by this common judgment.

#. Liberty is a basic and dynamic jurisprudential concept and philosophy, and therefore, it has constitutional and statutory safeguards for the preservation, projection and protection of the liberty of an individual. Since it is a dynamic aspect and concept, continued research is necessary to regularly assess the changing dimension and dynamics of such a constitutional right, personal right of liberty guaranteed under the Constitution, the highest law of the land.

#. Preventive detention has long standing and deep rooted base in this country. The preventive detention is a serious in-road and encroachment on the liberty of a person. All human beings are born with free and equal rights. All human beings are, no doubt, gifted by their creator with certain unalienable, nontransferable, nonnegotiable natural rights. Justice, liberty and equality have been pursuits of human kind and are sine qua non for organized civilized society. Preservation of human life is the most important right for an individual. The personal liberty has been claimed, and, as such, has been acclaimed as a part of the right to life and for the development and protection of this concept, Courts have taken utmost care to protect various aspects of personal liberty as part of protection of life. Article 21 provides for everyone, right to life, liberty and security of person. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22(5) also provides requisite and sufficient safeguards while encroaching upon the right to personal liberty of an individual. Under various detention laws, the competent authorities are empowered to pass order of detention, provided material and important constitutional and statutory

safeguards are observed, and subjective satisfaction has been reached on an objective assessment of the sufficient material. With this prefatory profile of the preventive detention law, it would be interesting and imperative to assess, evaluate and adjudicate upon the challenge to the detention orders in these petitions on the basis of material emerging from the record.

#. The learned advocates appearing for the petitioners and the learned Assistant Government Pleaders appearing for the respondents have offered their rival submissions. They have also taken this Court through the entire testimonial collection and documentary evidence in support of their submissions. This Court has also meticulously examined the factual profile emerging from the record of these petitions.

#. As stated above, the main contention propounded before this Court in this group of petitions on behalf of the petitioners is that the detaining authority has passed the questioned orders of detention without proper application of mind. It has been argued that the detaining authority has passed the detention orders relying upon certain criminal cases registered against the petitioners. From the grounds of detention and the affidavit-in-reply, it is spelt out and noticed that the detaining authority has passed the detentions orders at the time when the detenus were in judicial custody. It will be interesting to mention at this stage that the detaining authority, with regard to the factum of judicial custody of each detenu, has observed that there is likelihood of the detenu moving an application for bail in the Court of law, but this is assumed without attaining any satisfaction for reaching the conclusion for passing the detention order and even in absence of any cogent material. Nevertheless, it has been observed by the detaining authority in each case that though the detenu is in judicial custody while passing the detention order, he is likely to be released on bail. In the opinion of the Court, the excuse and the pretext that there is likelihood of presentation or submission of an application for being enlarged on bail by the detenu, ipso-facto, cannot constitute a subjective satisfaction for reaching the conclusion that there is a fit case for passing the detention order. In so far as the provisions of Section 3 of the PASA Act are concerned, there must be cogent material available with the officer passing the detention order to the effect that the detenu is likely to be enlarged on bail. Obviously, inference must be drawn from the available material on record and must not be ipse dixit of the officer passing the order of

detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is "likelihood to be released on bail" is different from "likelihood of his moving an application for bail". The reasoning for likelihood of moving an application of bail by the detenu is obviously different from the likelihood to be enlarged on bail. Such a reasoning, in the opinion of the Court, cannot be said to be sufficient compliance of the requirements and safeguards as laid down under the PASA Act and various decisions of this Court as well as Hon'ble Supreme Court. This Court is satisfied that this is nothing but a mechanical exercise of statutory powers radiating an imprint of non application of mind, and, therefore, without any material the so-called subjective satisfaction arrived at by the detaining authority under Section 3 of the PASA Act stands vitiated. The proposition of law, which is highlighted, is succinctly reinforced by decision of the Hon'ble Apex Court in the case of Amritlal and other v. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 SC 3675. It may be borne in mind that there is a thin distinction between the two, but it is fine and real, and when the detaining authority is not live to this issue, the detention orders in this group of petitions deserve to be quashed and set aside.

#. After having taken into consideration the overall factual profile emerging from the record of this group of five petitions, and considering the rival submissions and the relevant proposition of law, in the opinion of the Court, the decision rendered in the case of Amritlal and other v. Union Government through Secretary, Ministry of Finance and others (supra) is squarely attracted, and therefore, the present petitions are directly covered by the said decision.

#. In the result, the questioned detention orders are therefore liable to be quashed only on this ground without entering into the merits of other grounds of challenge and since this ground itself goes to the root of the matter, the other grounds are not probed meticulously upon joint request. Consequently, the petitioners succeed, and the petitions are accordingly allowed. The questioned order of detention in each petition is quashed and set aside, and it is hereby directed that the detenu in each case be set at liberty forthwith, if not required in any other case. Rule is made absolute without any order as to costs in each petition. Direct Service is permitted.

(J.N.Bhatt, Acting C.J.)

(sunil)